

A

MAHENDRA AND ORS.
v.
STATE OF UTTARANCHAL AND ANR.

JANUARY 9, 2007

B

[DR. ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

Practice and procedure:

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Two petitions filed against the same order—Plea that Advocate's clerk filed second petition by mistake—High Court dismissed the petitions—Held, filing of second application was on account of bona fide mistake—Matter remitted back for fresh consideration.

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The Single Judge of High Court dismissed the Criminal Miscellaneous applications on the ground that the appellants had filed two petitions in respect of the same impugned order and thus had concealed the fact.

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In appeal to this Court, appellant contended that the confusion arose because the latter petition i.e. CMA No. 4435 of 1998 was renumbered as CMA No. 950 of 2001 while the earlier petition i.e. CMA No. 4279 of 1998 was re-numbered as CMA No. 953 of 2001 and that by mistake the advocate's clerk filed exact copy of the earlier petition which was numbered as CMA No. 4435 of 1998. The same was filed at a latter date. In this background it was submitted that there was no suppression and in fact there was no reason to mislead the Court.

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Disposing of the appeal and remitting the matter to High Court, the Court

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HELD: 1. The confusion arose because the petition filed later was renumbered as CMA No. 950 of 2001 while the petition filed earlier, in which the order of stay granted on 23.12.1998, was re-numbered as CMA No. 953 of 2001. [280-E-F]

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2. In the peculiar circumstances of the case, it appears that the filing of the second application was on account of a *bona fide* mistake. [280-G]

3. It has to be noted that several petitions of similar nature are being filed without disclosing that earlier a petition had been filed. It would be therefore appropriate for the High Courts to make provision in the relevant Rules that in every petition it shall be clearly stated as to whether any earlier petition had been filed and/or is pending in respect of the same cause of action. It shall also be indicated as to what was the result of the earlier petition. If this procedure is followed, the confusion of the kind which has surfaced in this case can be ruled out. [281-A-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 34 of 2007.

From the Judgment and final Order dated 4.3.2006 of the High Court of Uttaranchal at Nainital in Crl. Misc. Application No. 950/2001 (Old No. 4435/1998).

Abhishth Kumar and K.N. Tripathy for the Appellants.

A.S. Rawat, A.A.G. and J.K. Bhatia for the Respondents.

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J.: Leave granted.

Challenge in this appeal is to the order passed by a learned Single Judge of the Uttaranchal High Court dismissing the Criminal Miscellaneous Applications. The High Court took exception to the fact that two petitions were filed in respect of the same impugned order. According to the High Court the appellants had concealed the fact that the second petition had been filed while the first petition was pending consideration.

Background facts in a nutshell are as follows:

Criminal Misc. Application No. 4279 of 1998 was filed by the appellants before the Allahabad High Court. After bifurcation of the State the said case was transferred to the Uttaranchal High Court and was re-numbered as Criminal Misc. Application No.953 of 2001. It appears that there was another petition filed which was numbered as Criminal Misc. Application No. 4435 of 1998 and the same was re-numbered as Criminal Misc. Application No.

- A 950 of 2001. The High Court was of the view that Criminal Misc. Application No. 4435 of 1998 corresponding to Criminal Misc. Application No. 950 of 2001 was filed earlier and when the appellants failed to get an order of stay they filed the second petition suppressing the fact that one earlier petition was pending. In the second petition the appellants got an order of stay. This according to the High Court was a depreciable practice.

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- Learned counsel for the appellants submitted that the confusion arose because the latter petition i.e. Criminal Misc. Application No. 4435 of 1998 was renumbered as Criminal Misc. Application 950 of 2001 while the earlier petition i.e. Criminal Misc. Application No. 4279 of 1998 was re-numbered as Criminal Misc. Application No. 953 of 2001. It is pointed out that the said petition was filed on 6.10.1998 and there was an interim order passed in the said case. It is submitted that by mistake the advocate's clerk filed exact copy of the earlier petition which was numbered as Criminal Misc. Application No. 4435 of 1998. The same was filed at a latter date. In this background it was submitted that there was no suppression and in fact there was no reason to mislead the Hon'ble Court.

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- Per contra* learned counsel for the State submitted that the appellants have not explained satisfactorily as to under what circumstances two similar applications were filed.

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- We find that in fact the confusion arose because the petition filed later was renumbered as Criminal Misc. Application No. 950 of 2001 while the petition filed earlier, in which the order of stay granted on 23.12.1998, was re-numbered as Criminal Misc. Application No. 953 of 2001.

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- Learned counsel for the appellants has submitted that the filing of the second application was on account of confusion and the same in fact was not pressed.

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- In the peculiar circumstances of the case we are satisfied that the filing of the second application was on account of a *bona fide* mistake and the confusion arose because of the fact that the second criminal application was renumbered as CrI. Misc. Application 950 of 2001 while the earlier petition was re-numbered as 953 of 2001. In the aforesaid background we set aside the order of the High Court and remit the matter to the High Court for fresh consideration on merits. Since the learned counsel for the appellant has

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stated that Criminal Misc. Application No. 4435 of 1998 was not pressed, the same need not be considered by the High Court.

Before we part with the case, it has to be noted that several instances have come to our notice that several petitions of similar nature are being filed without disclosing that earlier a petition had been filed. It would be therefore appropriate for the High Courts to make provision in the relevant Rules that in every petition it shall be clearly stated as to whether any earlier petition had been filed and/or is pending in respect of the same cause of action. It shall also be indicated as to what was the result of the earlier petition. If this procedure is followed, the confusion of the kind which has surfaced in this case can be ruled out.

The appeal is disposed of.

D.G.

Appeal disposed of.